

SUPERIOR COURT
OF THE
STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Wilmington, DE 19801-3733
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May 20, 2009

(VIA E-FILED)

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Submitted: February 27, 2009
Decided: May 20, 2009

RE: *Elizabeth L. Malatesta and Nellie R. Malatesta v. Stephan A.
Szewczyk and Mark M. Abbott*, C.A. No. 07C-05-173 FSS

Upon Defendant Mark Abbott's Motion for Summary Judgment – GRANTED

Dear Counsel:

This is a personal injury case arising from an automobile collision. This finalizes the court's decision granting Defendant Mark Abbott's motion for summary judgment. Abbott claims Plaintiffs failed to demonstrate an essential element of their negligence claim, specifically that Abbott breached his duty of care.

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The facts are virtually uncontested. The collision occurred on January 12, 2007 at the Hollymount Road and Indian Mission Road intersection in Sussex County, Delaware. The intersection has a flashing yellow light for vehicles traveling on Indian Mission Road, and a flashing red light for vehicles traveling on Hollymount Road. Before the collision, Defendant Abbott was on Indian Mission and Defendant Szewczyk was on Hollymount.

As Abbott approached the intersection, he saw a car on Hollymount cross Indian Mission. That car was occupied by Roman Cybak, Defendant Stefan Szewczyk's nephew. Szewczyk was following Cybak on their way to dinner. Plaintiffs were passengers in Szewczyk's vehicle.

After Cybak crossed Indian Mission Road, Szewczyk stopped at the Hollymount flashing red light and stop sign. Cybak waited for his uncle on the other side of Indian Mission. Cybak had noticed Abbott's vehicle approaching Hollymount before he crossed Indian Mission, and he believed there was enough time for both him and his uncle to cross.

Abbott continued toward the intersection, either reaching the road's 50 m.p.h. speed limit or close to it, but not exceeding it. As he closed on the intersection, Abbott "covered the brake" with his foot. Upon Abbott's approach, however, Szewczyk tried to make it through the intersection. Abbott tried to stop. Before hitting Szewczyk, Abbott left a 58 foot skid mark in his wake. Plaintiffs were seriously hurt. Szewczyk admits he simply did not see Abbott's car.

Plaintiffs filed suit on May 16, 2007. Abbott moved for summary judgment on January 15, 2009. The court heard oral argument on February 20, 2009, giving Abbott leave to file an expert opinion clearly delineating Abbott's negligence or lack thereof. Abbott hired an accident reconstruction specialist and submitted his opinion on February 25, 2009. Plaintiffs' response was received on February 27, 2009.

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Here, Plaintiffs must show that, (1) Defendant owed a duty to Plaintiffs, (2) Defendant breached that duty, and (3) that breach was a proximate and legal cause of Plaintiff's injuries.¹ Accordingly, in his motion for summary judgment, Defendant must show that "there is no genuine issue of fact relating to the question of negligence and that the proven facts preclude the conclusion of negligence on [his] part."² Plaintiffs' failure to prove an essential element of their case "necessarily renders all other facts immaterial."³ Therefore, the court must first determine if Plaintiffs failed to prove negligence.⁴

Viewing the evidence in the light most favorable to Plaintiffs, there is no evidence showing Abbott was negligent. Unlike Szewczyk, Abbott was aware of his environment, having noticed Cybak's vehicle cross the road and Swezcyk's vehicle stopped at the Hollymount stop sign. The worst Plaintiffs can say about Abbott is that he did not slow down appreciably as he approached the intersection, facing a flashing yellow light. The rules of the road, however, do not require a driver to slow down, as a matter of law. Abbott was not speeding as he approached the intersection and, even if his foot "covered the brake," he kept a proper lookout for danger, thereby acting carefully under the circumstances. Abbott's expert report, which is undisputed, supports that finding. Plaintiffs have not been able to produce evidence to the contrary.

In short, had this case gone to trial, giving Plaintiffs the benefit of the doubt, the jury would have to have concluded that the collision was caused by Szewczyk's failure to see Abbott approaching and his decision to enter the

¹ *Pipher v. Parsell*, 930 A.2d 890, 892 (Del. 2007) (citations omitted).

² *Hazel v. Del. Supermarkets, Inc.*, 953 A.2d 705, 709 (Del. 2008) (quoting *Howard v. Food Fair Stores, New Castle, Inc.*, 201 A.2d 638, 640 (Del. 1964)).

³ *Burkhart v. Davies*, 602 A.2d 56, 58-59 (Del. 1991) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1989)).

⁴ *Hazel*, 953 A.2d at 709.

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intersection in an unsafe way, without regard for approaching traffic. Therefore, Defendant Mark Abbott's motion for summary judgment is **GRANTED**.

IT IS SO ORDERED.

Very Truly Yours,

/s/ Fred S. Silverman

cc: Prothonotary (civil)